IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

CRL.REF.No. 18 of 2007()

SC.92/2007 of ADDL.DISTRICT COURT (ADHOC), KOTTAYAM

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REFERENCE FROM THE ADDITIONAL DISTRICT AND SESSIONS JUDGE (ADHOD-I), KOTTAYAM)

PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY ANSWERED THE FOLLOWING:

R.BASANT, J.

Crl.Ref.No.18 of 2007

Dated this the 4th day of December 2007

O R D E R

This Criminal Reference has been registered on the basis of the order of reference dated 6/9/2007 passed by the Additional District and Sessions Judge (Adhoc-I), Kottayam which has been forwarded to this court by the learned Sessions Judge, Kottayam by this order dated 7/9/2007.

2. S.C.No.92/07 is a sessions case registered against three accused persons alleging commission of offences punishable inter alia under Sections 308 and 506(1) I.P.C. The alleged incident had taken place on 22/10/2006. Crime was registered. Investigation was conducted. Final report was submitted by the police against three accused persons (accused 1 to 3). Cognizance was taken by the learned Magistrate. An order of committal was passed committing the case with accused 1 to 3 on the array of parties to the Sessions Court, Kottayam.

3. Cognizance was taken by the Sessions Court, Kottayam and the case was made over after numbering to the Additional Sessions Judge (Adhoc-I), Kottayam. When the

matter reached the Additional Sessions Judge (Adhoc-I), Kottayam at the stage of framing charge, a contention was raised that the second accused is a child born on 10/5/1991 and on the relevant date, that is the date of occurrence, 22/10/2006, the second accused was a child in conflict with the law and therefore the order of committal passed in respect of that accused is bad in law. The learned Additional Sessions Judge conducted an enquiry and was satisfied that the second accused was born on 10/5/1991 and that consequently on the date of occurrence, he was only a juvenile having not completed the age of eighteen years and hence a child . The learned Sessions Judge does not have the jurisdictional competence to quash the order of committal. Therefore this reference has been made to this court under Section 395 Cr.P.C.

4. The report clearly shows that the second accused is a child in conflict with the law on the date of occurrence. Section 7 of the Juvenile Justice Act clearly mandates that a Magistrate before whom such a child in conflict with the law is produced should refer the child to a Juvenile Justice Board. Ignoring and overlooking the said statutory stipulations, the learned

Magistrate has erroneously committed the second accused also along with two other co-accused to the court of Session.

5. I am satisfied that the order of committal in so far as it relates to the second accused deserves to be quashed. This court has the option of directing that the second accused be produced before the learned Magistrate and to direct that the learned Magistrate must follow the procedure under Section 7 of the Juvenile Justice Act. But in the facts and circumstances of this case, I am satisfied that such unnecessary time consuming process can be avoided and the learned Additional Sessions Judge can be directed to refer the child to the Juvenile Justice Board in accordance with the provisions of Section 7. The prosecution shall furnish an additional set of documents also to be produced before the Juvenile Justice Board.

6. This reference is thus answered. Order of committal in S.C.No.92/2007 in so far as it relates to the second accused is hereby quashed. The further proceedings in S.C.No.92/07 can continue in so far as the other co-accused are concerned. The learned Additional Sessions Judge shall forward the second accused/Juvenile to the Juvenile Justice Board. The Juvenile

Justice Board shall reckon the same as a reference from the learned Magistrate concerned under Section 7 of the Juvenile Justice (Care and Protection of Children) Act and shall proceed accordingly.

7. The learned Sessions Judge shall ensure that necessary entries are made in all relevant documents to give effect to this order passed by this court.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007